



U S Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave S E
Washington DC 20590

JAN 10 2008

Ms. Anna Black
Owner
Key Pipelines, Ltd.
355 Ashland Loop Road
Ashland, OR 97520

Re: CPF No. 5-2005-5016

Dear Ms. Black:

Enclosed is a decision on the petition for reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has conditionally granted the petition and reduced the civil penalty to \$2500 if the conditions set forth in the decision are met. Payment of the remaining \$2500 is due within 20 days following receipt of the decision. The conditions include a requirement that you submit documentation within 30 days following receipt of this decision that all required corrective action and amendment of procedures has been completed, including documentation of the costs incurred in doing so. Failure to satisfy the conditions nullifies this reduction and the civil penalty will immediately become due in full. Your receipt of this decision constitutes service under 49 C.F.R. § 190.5.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

_____)
In the Matter of)

Key Pipelines, Ltd.,)

Petitioner)
_____)

CPF No. 5-2005-5016

DECISION ON PETITION FOR RECONSIDERATION

Background

On December 11, 2006, pursuant to chapter 601, title 49 United States Code, the Associate Administrator for Pipeline Safety issued a Final Order in this case finding that Petitioner had committed violations of the hazardous liquid pipeline safety regulations and assessing a civil penalty in the amount of \$7,500. The violations involved Petitioner's failure to comply with the integrity management requirements at 49 C.F.R. § 195.452.¹ The Final Order also ordered Petitioner to take certain measures to correct the alleged violations and directed Petitioner to amend its written integrity management program procedures.

On December 27, 2006, Petitioner filed a petition for reconsideration of the Final Order and a request for an extension of time to complete the compliance order and amendment of procedures. In its petition, Petitioner sought reconsideration of the civil penalty amount assessed in Final Order on the grounds that payment of the \$7500 penalty would constitute a financial hardship given its current financial condition. Petitioner did not request reconsideration of the findings of violation in the order and expressed its intent to complete the actions specified in the compliance order and amendment of procedures.

Discussion

The transportation of hazardous liquids by pipeline involves inherent risks and persons electing to engage in such transportation are well aware that it is subject to a set of comprehensive safety regulations. Regulatory compliance costs are inherent to pipeline operations and pipeline operators are expected to have sufficient financial health to satisfy all compliance costs. In short, non-compliance is not an option for an operator of any size. Federal policy, however, does

¹ The violations are more fully described in the Final Order.

provide a degree of discretion for the modification of penalties for small businesses under certain conditions and ability to pay is a statutory consideration under 49 U.S.C. 60122(b). The operator, however, has the burden of demonstrating financial hardship.

In this case, Petitioner is a small business and provided financial documentation in connection with its petition including a certified financial statement to support its claim of financial hardship. Petitioner also provided information concerning its good faith efforts to comply. In addition, Petitioner informed PHMSA that for purposes of its integrity management program, it would treat even the non-high consequence area (HCA) portions of its pipeline as if they were located in a HCA

Relief Conditionally Granted

Having considered Petitioner's request for reconsideration, I find Petitioner is a small business and has demonstrated that payment of the full \$7500 penalty would constitute a financial hardship given its current financial condition. I further find that the violations did not involve an impending threat to public safety or any criminal wrongdoing. Accordingly, I have decided to waive \$5000 of the \$7500 civil penalty if the following conditions are met:

- (1) The amount waived must be used for safety and compliance activities such as pipeline integrity management programs;
- (2) Within 30 days following receipt of this decision, submit documentation demonstrating that all required corrective action and amendment of procedures set forth in the December 11, 2006 Final Order has been completed; and
- (3) Submit documentation of the costs incurred for accomplishing the actions described in Items 1 and 2 above along with the documentation demonstrating that the required actions have been completed.

Failure to satisfy the above conditions nullifies this reduction and the civil penalty will immediately become due in full.

Payment of the remaining \$2500 civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-341), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.



Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

JAN 10 2008

Date Issued